

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 73 of 2003

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. D.S.SINHA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : YES
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

HARSHAD BABUBHAI AMIN

Versus

PRAVINABEN CHANDRAKANT PATEL

Appearance:

MR MAYANK DESAI for MR NILESH M SHAH for applicant

CORAM : THE CHIEF JUSTICE MR. D.S.SINHA

Date of decision: 21/02/2003

ORAL JUDGEMENT

#. Heard Mr.Mayank Desai for Mr.N.M.Shah, learned
counsel of the applicant.

#. By means of instant application under Section 115 of the Code of Civil Procedure, 1908, hereinafter called "the Code", the applicant, who figures as defendant in Civil Suit No.932 of 1989, instituted in the City Civil Court at Ahmedabad, between Smt.Pravinaben Chandrakant Patel & others and him, seeks to assail the order dated 9th January, 2003, passed by the Additional Principal Judge, City Civil Court, Ahmedabad, whereby the suit has been transferred from the file of Judge, City Civil Court No.16 to the file of Shri P.B.Desai, Judge, City Civil Court No.8.

#. The plaintiffs moved an application dated 6th January, 2003, asserting, interalia, that they were not likely to get justice and there were all chances of injustice. On this premise, they made the following prayer:

"(A) Hon'ble Court be pleased to Stay the
hearing of the matter and ordered "Not
before me" and send back."

#. In the circumstances, arising out of the application of the plaintiffs, the learned Additional Principal Judge, City Civil Court, Ahmedabad, passed the following order"

"O R D E R :

In view of the order passed by the
Learned Principal Judge and taking into
consideration the submission made by Brother
Judge Shri A.C.Rao, the matter requires to be
transferred to other Court for the purpose of
hearing, as the learned Judge does not want to
conduct the matter. Hence the matter may be
placed in the Court of Brother Judge Shri
P.B.Desai, Judge Court no.8, for hearing and
final disposal of this matter.

Dt.:9-1-2003 sd/-
Ahmedabad (H.B.Antani)
Addl.Principal Judge"

#. Upon hearing the learned counsel of the applicant and giving anxious consideration to the facts and circumstances of the case, the Court is of the opinion that the impugned order is not amenable to the revisional jurisdiction of this Court under Section 115 of the Code.

#. The provisions of Section 115 of the Code can be invoked only where any case has been decided by the Court subordinate to the High Court, and in which no appeal lies thereto, and if such subordinate Court appears (a) to have exercised a jurisdiction not vested in it by law, or (b) to have failed to exercise a jurisdiction so vested, or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity. The power of the High Court under Section 115 of the Code is circumscribed by the proviso which reads thus:

"Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings."

#. Thus, the twin conditions contemplated by principal section and proviso thereto are that the order impugned must fall within the expression "case decided" and such order must have the effect of finally disposing of the suit or other proceeding if it had been made in favour of the party applying for revision.

#. No order which by itself does not adjudicate and decide any right of a party, which is subject of the suit can be held to be a "case decided" which, as already noticed, is a sine qua non for exercising the power under Section 115 of the Code. An order transferring the suit from the file of a Judge to the file of another Judge does not decide any right of the party to the suit.

#. Likewise, the order by which a suit is transferred from the file of one Judge to the file of another Judge cannot, by any stretch of imagination, be taken to have the effect of finally disposing of the suit or other proceeding even if it had been made in favour of the party applying for revision.

##. Tested upon the above touchstone, the order impugned herein neither has the effect of deciding any case nor could have the effect of finally disposing of the suit or any other proceeding even if it had been made in favour of the applicant herein.

##. In view of what has been said above, instant revision is misconceived, and fails at the threshold. It is rejected accordingly.

(D.S.Sinha, C.J.)

(sunil)